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PROCOPIO, CORY, HARGREAVES & SAVITCH LLP			CHONG CRUZ, NADJA N	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@procopio.com  
PTONotifications@procopio.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/688,450	MOLL, RODNEY L.	
	<b>Examiner</b>	<b>Art Unit</b>	
	NADJA CHONG CRUZ	4143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 17 October 2003.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-21 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 17 October 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>17 October 2003</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|  | 6) <input type="checkbox"/> Other: _____ .                        |

**DETAILED ACTION**

**Status of Claims**

1. This action is in reply to the application filed on 10 October 2003.
2. Claims 1 - 21 are currently pending and have been examined.

**Claim Rejections - 35 USC § 112**

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1, 13, 18 and 21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims 1, 13, 18 and 21 merely recites the manipulation of an abstract idea and does not produce a concrete result. Claims 1, 13, 18 and 21 recite *determining a relevant improvement factor...based on analysis of the evaluation data/customer shopping data...* and *developing a specific knowledge product*, which is a mere abstract ideas that does not produce a real- world result. The steps of *determining a relevant improvement factor...based on analysis of the evaluation data/customer shopping data...* and *developing a specific knowledge product*, are based on subjective standards. The results of this step will not produce concrete real-world results since there is no evidence that this step, when repeated, will produce substantially the same results. This step is based on a subjective standard and will produce different results for each individual performing the step. Therefore, if they can't produce substantially the same result then one in the art would not be "enabled" to make and/or use to the invention and repeat substantially the same results.
5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 3 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
7. The limitation from Claim 3 *at least one of the above method and one or more steps of the above method are performed multiple times* are vague and indefinite, the limitations do not define the metes and bounds of the invention. For the purposes of this examination, *at least one of the above method and one or more steps of the above method are performed multiple times* will be interpreted as method that is performed in different times intervals. Appropriate correction is required.
8. Claim 21 recites the limitations *the server*. There is insufficient antecedent basis for this limitation in the claim.

**Claim Rejections - 35 USC § 101**

9. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

10. Claims 1, 13, 18 and 21 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claimed invention is required to produce a useful, concrete, and tangible real-world result. An invention that fails to produce a tangible result is one that involves no more than the manipulation of an abstract idea. See *State Street Bank & Trust Co. v. Signature Financial Group Inc.*, 149 F. 3d 1368, 47 USPQ2d 1596 (Fed. Cir. 1998). In order to be concrete the result must be substantially repeatable or the process must substantially produce the same result again. Claims 1, 13, 18 and 21 merely recites the manipulation of an abstract idea and does not produce a concrete result. Claims 1, 13, 18 and 21 recite *determining a relevant improvement factor...based on analysis of the evaluation data/customer shopping data... and developing a specific knowledge product*, which is a mere abstract ideas that does not produce a real- world result. The steps of *determining a relevant improvement factor...based on analysis of the evaluation data/customer shopping data... and developing a specific knowledge product*, are based on subjective standards. The results of this step will not produce concrete real-world results since there is no evidence that this step, when repeated, will produce substantially the same results. This step is based on a subjective standard and will produce different results for each individual performing the step. Because the results produced by the method are not tangible and concrete, claims 1, 13, 18 and 21 are considered to be directed toward non-statutory subject matter.

**Claim Rejections - 35 USC § 103**

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. Claims 1, 3-6, 8 and 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pulford (US 6,952,679 B1) in view of Alan M. Wilson, **Mystery Shopping: Using Deception to Measure Service Performance**; Psychology & Marketing; John Wiley & Sons, Inc.; Vol. 18(7): 721-734 (July 2001) hereinafter "Wilson".

**Examiner's Note:** The Examiner has pointed out particular references contained in the prior art of record within the body of this action for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply. Applicant, in preparing the response, should consider fully the entire reference as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

**Claim 1:**

Pulford as shown, discloses the following limitations:

- *performing mystery shopping at a company* (see at least Figure 1, reference character: "120", which teaches that after training the anonymous shopper (e.g. mystery shopper), he/she will monitor the consistency of processes and procedures of the retail store (e.g. company) operations);
- *evaluating the mystery shopping* (see at least Figure 1, reference character: "130", which teaches that key areas are evaluated based on the responses from the anonymous shopper questions during the monitoring process at the retail store);

- *transmitting evaluation data for the mystery shopping to a central location* (see at least Figure 1, reference character: "160" and column 4, lines 32-34: "The answers can be input on an electronic or a printed form or scanned through the use of an electronic data entry device", which teaches after completing the mystery shopping, answers are entering into a computer for further evaluation at the central location);

Pulford does not disclose the following limitation, however Wilson as shown, does:

- *determining a relevant improvement factor for the company at the central location based on analysis of the evaluation data for the mystery shopping* (see at least page 730, 1<sup>st</sup> and 2<sup>nd</sup> ¶: "...to act as a diagnostic tool identifying failings and weak points in an organization's service delivery" which is one of the main purposes for mystery shopping is to identify areas or methods for improvement, since mystery shopping "can track the key elements of an organization's service-delivery process and help identify where capital, technical, and human resources need to be allocated.");
- *developing a specific knowledge product for improving employees of the company in the relevant improvement factor* (see at least page 730, 1<sup>st</sup> ¶: "...to encourage, develop, and motivate service personnel by linking performance measurement tools directly with appraisal, training, and reward mechanisms", after identifying areas for improvement, as explained above, solutions and ideas are developed linking them with appraisal, training and reward mechanisms);
- *implementing the specific knowledge product with the employees of the company for improving the employees of the company in the relevant improvement factor, increasing customer satisfaction and sales* (see at least page 723 1<sup>st</sup> and 4<sup>th</sup> ¶: after developing the solutions and ideas for improvement, "a critical part of the procedures and systems is the setting of service standards" which includes, "(a) establishing a target toward which all employees can direct their efforts; (b) communicating the expectations of management and customers to employees; and

(c) creating a valuable management tool to assist with recruitment profiles, job descriptions, and appointing decisions", then, this will improve "the customer's experience during the delivery of a service" since it "is as important to customer satisfaction as is the benefit that the service provides", therefore sales will increase.);

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the method and system for evaluating quality services of Pulford with the technique of using deception to measure service performance through mystery shopping as taught by Wilson because "only mystery shopping has the potential to directly measure service performance across the full range of preset quality standards, including" the "behavioral aspects of performance" (Wilson, see at least, page 724, 1<sup>st</sup> ¶). Furthermore, Wilson teaches that "mystery-shopping results are used for three main purposes: (a) to act as a diagnostic tool identifying failings and weak points in an organization's service delivery; (b) to encourage, develop, and motivate service personnel by linking performance measurement tools directly with appraisal, training, and reward mechanisms; and (c) to assess the competitiveness of an organization's service provision by benchmarking it against the offerings of others in an industry." (Wilson, see at least, page 732, Conclusions, 1<sup>st</sup> ¶).

**Claims 3:**

The combination of Pulford/Wilson discloses the limitations of Claim 1, as shown above. Furthermore, Pulford as shown, discloses the following limitation:

- *wherein at least one of the above method and one or more steps of the above method are performed multiple times with employees of the same company to improve multiple improvement factors* (see at least Figure 2, reference character: "270", and column 7, lines 33-43, which teaches a method for evaluating a business operation during different times intervals);

**Claims 4:**

The combination of Pulford/Wilson discloses the limitations of Claim 1, as shown above.

Furthermore, Pulford as shown, discloses the following limitation:

- *wherein performing mystery shopping at a company includes performing mystery shopping at multiple store locations of a company* (see at least Figure 3, reference character: “370”, and column 8, lines 40-50, which teaches a method of evaluating two or more business operation within a chain of business operation);

**Claims 5:**

The combination of Pulford/Wilson discloses the limitations of Claim 1, as shown above.

Furthermore, Pulford as shown, discloses the following limitation:

- *wherein performing mystery shopping at a company includes mystery shopping multiple times at a store location of a company* (see at least Figure 2, reference character: “270”, and column 7, lines 33-43, which teaches a method for evaluating a business operation during different times intervals);

**Claims 6:**

The combination of Pulford/Wilson discloses the limitations of Claim 1, as shown above.

Furthermore, Pulford as shown, discloses the following limitation:

- *wherein evaluating the mystery shopping includes answering a number of predetermined questions related to the mystery shopping immediately after performing the mystery shopping* (see at least Figure 1, reference characters: “120”, “130” and column 5, lines 35-36: “after evaluating key areas of a business operation by responding to questions 130”, which teaches that after performing the mystery shopping an evaluation form is completed).

With regard with the limitation *immediately after*, the limitation is a non-functional descriptive material. The limitation *immediately after* does not change how the steps are performed or the outcome since when the shopper answers the questions, the questions don't

change. These differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *in re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 44(Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ 2d 1031(Fed. Cir. 1994).

**Claims 8:**

The combination of Pulford/Wilson discloses the limitations of Claim 1, as shown above. Furthermore, Pulford as shown, discloses the following limitation:

- *wherein transmitting evaluation data for the mystery shopping to a central location includes transmitting answers to a number of predetermined questions related to the mystery shopping to the central location wirelessly using a wireless communication device* (see at least column 5, lines 17-18: “Hand held electronic data entry devices are well known”, which it is implicit disclosed that a hand held device is a wireless communication device since it is used to transmits data and communicates to a server. Handheld devices have been used to record information in the field, for example a mobile device, smart phone, wireless capable personal digital assistant (PDA), etc.);

**Claim 13:**

Pulford as shown, discloses the following limitations:

- *performing mystery evaluation at a service entity location* (see at least Figure 1, reference character: “120”, which teaches that after training the anonymous shopper (e.g. mystery shopper), he/she will monitor the consistency of processes and procedures (i.e. costumer service evaluation) of the retail store (e.g. service entity location) operations);
- *transmitting evaluation data for the mystery evaluation to a central location* (see at least Figure 1, reference character: “160” and column 4, lines 32-34: “The answers

can be input on an electronic or a printed form or scanned through the use of an electronic data entry device”, which teaches after completing the customer service evaluation, answers are entering into a computer for further evaluation at the central location);

Pulford does not disclose the following limitation, however Wilson as shown, does:

- *determining a relevant improvement factor for the service entity at the central location based on analysis of the evaluation data for the mystery evaluation* (see at least page 730, 1<sup>st</sup> and 2<sup>nd</sup> ¶: “...to act as a diagnostic tool identifying failings and weak points in an organization’s service delivery” which is one of the main purposes for mystery shopping is to identify areas or methods for improvement, since mystery shopping “can track the key elements of an organization’s service-delivery process and help identify where capital, technical, and human resources need to be allocated.”);
- *developing a specific knowledge product for improving members of the service entity in the relevant improvement factor* (see at least page 730, 1<sup>st</sup> ¶: “...to encourage, develop, and motivate service personnel by linking performance measurement tools directly with appraisal, training, and reward mechanisms”, after identifying areas for improvement, as explained above, solutions and ideas are developed linking them with appraisal, training and reward mechanisms);
- *implementing the specific knowledge product with the members of the service entity for improving the members of the service entity in the relevant improvement factor, improving service* (see at least page 723 1<sup>st</sup> and 4<sup>th</sup> ¶: after developing the solutions and ideas for improvement, “a critical part of the procedures and systems is the setting of service standards” which includes, “(a) establishing a target toward which all employees can direct their efforts; (b) communicating the expectations of management and customers to employees; and (c) creating a valuable management tool to assist with recruitment profiles, job descriptions, and

appointing decisions”, then, this will improve “the customer’s experience during the delivery of a service” since it “is as important to customer satisfaction as is the benefit that the service provides.”);

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the method and system for evaluating quality services of Pulford with the technique of using deception to measure service performance through mystery shopping as taught by Wilson because “only mystery shopping has the potential to directly measure service performance across the full range of preset quality standards, including” the “behavioral aspects of performance” (Wilson, see at least, page 724, 1<sup>st</sup> ¶). Furthermore, Wilson teaches that “mystery-shopping results are used for three main purposes: (a) to act as a diagnostic tool identifying failings and weak points in an organization’s service delivery; (b) to encourage, develop, and motivate service personnel by linking performance measurement tools directly with appraisal, training, and reward mechanisms; and (c) to assess the competitiveness of an organization’s service provision by benchmarking it against the offerings of others in an industry.” (Wilson, see at least, page 732, Conclusions, 1<sup>st</sup> ¶).

**Claims 14:**

The combination of Pulford/Wilson discloses the limitations of Claim 13, as shown above. Furthermore, Pulford as shown, discloses the following limitation:

- *wherein the service entity is an entity from the group consisting of a commercial entity, a public sector entity, a non-profit entity, a charitable entity, a volunteer entity, and a religious entity* (see at least column 1, lines 14-19: “Performance evaluations for business operations are an important aspect of quality service for any business that provides a consumer type service. These evaluations can be performed in-store for retail operations as well as on-site for other types of service businesses, hospitals, banking, personnel services automotive repair, restaurants etc.”, which teaches that a service entity is any business that provide a consumer type service);

14. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Pulford and Wilson in view of O'Donnell (US 2003/0065616 A1).

**Claim 2:**

The combination of Pulford/Wilson discloses the limitations of Claim 1, as shown above. The combination of Pulford/Wilson does not disclose the following limitation, but O'Donnell however, as shown, does:

- *wherein an entity receives consideration from the company for providing the method to the company, and at least a portion of the consideration is returned to the company if providing the method does not improve sales* (see at least Abstract and page 1, ¶ 0004: “A method of purchasing a product or service in which a tax-deferred savings instrument is used to provide for a full or partial refund to the consumer, while also proving a partially deferred or totally deferred payment to the provider of the service or product to the consumer” and “prior art business programs offering a refund have generally been limited to money-back guarantees of satisfaction” which is well known in the art, where if the customer is not satisfied he/she are expecting some sort of money-back guarantee);

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the method and system for evaluating quality services of Pulford with the technique of using deception to measure service performance through mystery shopping as taught by Wilson with the consumer refund deferred provider payment elective tax-deferred savings instrument business method of O'Donnell because "such a refund incentive will encourage consumers to make purchases of products or services which would otherwise not be considered by the consumer". (O'Donnell, see at least page 1, ¶ 0006).

15. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Pulford and Wilson in view of The Secret Shopper Company; Current Shoppers: **How To Submit Forms Online**([http://web.archive.org/web/20010801204643/secretshoppercompany.com/CS\\_frameset.html](http://web.archive.org/web/20010801204643/secretshoppercompany.com/CS_frameset.html) (1 of 2) August 2001.

**Claim 7:**

The combination of Pulford/Wilson discloses the limitations of Claim 1, as shown above. The combination of Pulford/Wilson does not disclose the following limitation, but The Secret Shopper Company however, as shown, does:

- *wherein transmitting evaluation data for the mystery shopping to a central location includes accessing a web site and providing answers to a number of predetermined questions related to the mystery shopping to the central location via the web site* (see at least The Secret Shopper Company; Current Shoppers: How To Submit Forms Online, a step-by-step introduction, which teaches how to submit the evaluation data of a mystery shopping experience through a web site, by login a username, password and how to fill out the forms);

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the method and system for evaluating quality services of Pulford with the technique of using deception to measure service performance through mystery shopping as taught by Wilson with the use of the Secret Shopper Company web site because by using a web site is an inexpensive way to sell and advertise products and/or services on the internet, reduce customer service and staff costs, since a web site allow to access and input data at any hour from anywhere, where the mystery shopping evaluation forms will be submitted in a more efficient, quickly and secure way, therefore by accessing a web site will minimize printing, faxing, postage and handling costs.

16. Claims 9, 10 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Pulford and Wilson in view of Gray et al (US 6,944,596 B1) hereinafter "Gray".

**Claim 9:**

The combination of Pulford/Wilson discloses the limitations of Claim 1, as shown above. The combination of Pulford/Wilson does not disclose the following limitation, but Gray however, as shown, does:

- *developing a specific training program for improving employees of the company in the relevant improvement factor* (see at least column 2, lines 3-7 and 21-38: “A network is utilized to present a training simulation to a user for achieving a training goal. Information is integrated into the training simulated utilizing the network that helps motivate achievement of the goal by the user” which teaches that a training simulation is created in order to achieve a goal (e.g. relevant improvement factor) for improvement such as "... (3) sales and marketing excellence for teaching the user skills in increasing sales of products and services...”);
- *and implementing with the specific knowledge product the specific training program with the employees of the company for improving the employees of the company in the relevant improvement factor, increasing customer satisfaction and sales* (see at least Figure 2, reference character: “The learning objectives and supporting methods that shape the training program an it's content 208” and column 12, lines 46-54 and column 14, lines 42-48, which “illustrates a model for the various aspects of training including: (1) a simulation 200 of the job and development of employee's ability to perform their job (technical, business, and customer skills; (2) a training environment 202 to deliver training anytime and anywhere; (3) coaching tips 204 and learning resources 206 to enhance performance development; and (4) A curriculum 208 of content addressing high volume, recurrent development needs” where “these learning objectives will help achieve business benefits such as increasing customer satisfaction through consistent customer interactions, reinforcing behaviors (selling, collections, etc) to meet business objectives, and reducing lost time/effort resulting from resolution errors.”);

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the method and system for evaluating quality services of Pulford with the technique of using deception to measure service performance through mystery shopping as taught by Wilson with the employee analysis based on results of an education business simulation of Gray because “business simulations may serve as the basis for delivering such performance and provide a learning environment that enables participants to acquire technical and social skills better (i.e., with higher retention) and faster (i.e., less time to competence) by providing a goal, simulating the workplace (with a focus on application of knowledge and skills), providing a risk-free environment, allowing the learner to make mistakes, allowing the learner to set own pace, providing support/resources/expertise as needed, and allowing performance to confirm employee's competence.” (Gray, see at least column 13, lines 12-21).

**Claims 10:**

The combination of Pulford/Wilson discloses the limitations of Claim 1, as shown above. Furthermore, Wilson as shown discloses the following limitation:

- *determining multiple relevant improvement factors for the company at the central location based on analysis of the evaluation data for the mystery shopping evaluation* (see at least page 730, 1<sup>st</sup> and 2<sup>nd</sup> ¶: “...to act as a diagnostic tool identifying failings and weak points in an organization's service delivery” which is one of the main purposes for mystery shopping is to identify areas or methods for improvement, since mystery shopping “can track the key elements of an organization's service-delivery process and help identify where capital, technical, and human resources need to be allocated.”);
- *developing a specific knowledge product, developing multiple respective specific knowledge products* (see at least page 730, 1<sup>st</sup> ¶: “...to encourage, develop, and motivate service personnel by linking performance measurement tools directly with appraisal, training, and reward mechanisms”, after identifying areas for

improvement, as explained above, solutions and ideas are developed linking them with appraisal, training and reward mechanisms);

The combination of Pulford/Wilson does not disclose the following limitation, but Gray however, as shown, does:

- *and a specific training program for improving employees of the company in the relevant improvement factor, and specific training programs for the multiple respective relevant improvement factors* (see at least column 2, lines 3-7 and 21-38: "A network is utilized to present a training simulation to a user for achieving a training goal. Information is integrated into the training simulated utilizing the network that helps motivate achievement of the goal by the user" which teaches that trainings simulations are created in order to achieve a goal (e.g. relevant improvement factor) for improvement such as "... (3) sales and marketing excellence for teaching the user skills in increasing sales of products and services...);

- *and implementing the specific knowledge product and the specific training program with the employees of the company for improving the employees of the company in the relevant improvement factor includes implementing the multiple respective specific knowledge products and specific training programs with the employees of the company for improving the employees of the company in the multiple respective relevant improvement factors (see at least Figure 2, reference character: “The learning objectives and supporting methods that shape the training program an it's content 208” and column 12, lines 46-54 and column 14, lines 42-48, which “illustrates a model for the various aspects of training including: (1) a simulation 200 of the job and development of employee's ability to perform their job (technical, business, and customer skills; (2) a training environment 202 to deliver training anytime and anywhere; (3) coaching tips 204 and learning resources 206 to enhance performance development; and (4) A curriculum 208 of content addressing high volume, recurrent development needs” where “these learning objectives will help achieve business benefits such as increasing customer satisfaction through consistent customer interactions, reinforcing behaviors (selling, collections, etc) to meet business objectives, and reducing lost time/effort resulting from resolution errors.”);*

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the method and system for evaluating quality services of Pulford with the technique of using deception to measure service performance through mystery shopping as taught by Wilson with the employee analysis based on results of an education business simulation of Gray as discussed above in Claim 9.

**Claims 17:**

The combination of Pulford/Wilson discloses the limitations of Claim 13, as shown above. The combination of Pulford/Wilson does not disclose the following limitation, but Gray however, as shown, does:

- *developing a specific training program for improving members of the service entity in the relevant improvement factor* (see at least column 2, lines 3-7 and 21-38: “A network is utilized to present a training simulation to a user for achieving a training goal. Information is integrated into the training simulated utilizing the network that helps motivate achievement of the goal by the user” which teaches that a training simulation is created in order to achieve a goal (e.g. relevant improvement factor) for improvement such as "... (3) sales and marketing excellence for teaching the user skills in increasing sales of products and services...");
- *and implementing with the specific knowledge product the specific training program with the members of the service entity for improving members of the service entity in the relevant improvement factor, improving service* (see at least Figure 2, reference character: “The learning objectives and supporting methods that shape the training program an it's content 208” and column 12, lines 46-54 and column 14, lines 42-48, which “illustrates a model for the various aspects of training including: (1) a simulation 200 of the job and development of employee's ability to perform their job (technical, business, and customer skills; (2) a training environment 202 to deliver training anytime and anywhere; (3) coaching tips 204 and learning resources 206 to enhance performance development; and (4) A curriculum 208 of content addressing high volume, recurrent development needs” where “these learning objectives will help achieve business benefits such as increasing customer satisfaction through consistent customer interactions, reinforcing behaviors (selling, collections, etc) to meet business objectives, and reducing lost time/effort resulting from resolution errors.”);

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the method and system for evaluating quality services of Pulford with the technique of using deception to measure service performance through mystery shopping as taught by Wilson with the employee analysis based on results of an education business simulation of Gray because “business simulations may serve as the basis for delivering such performance and provide a learning environment that enables participants to acquire technical and social skills better (i.e., with higher retention) and faster (i.e., less time to competence) by providing a goal, simulating the workplace (with a focus on application of knowledge and skills), providing a risk-free environment, allowing the learner to make mistakes, allowing the learner to set own pace, providing support/resources/expertise as needed, and allowing performance to confirm employee's competence.” (Gray, see at least column 13, lines 12-21).

17. Claims 11-12 and 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Pulford and Wilson in view of **Official Notice**.

**Claims 11 and 15:**

The combination of Pulford/Wilson discloses the limitations of Claims 1 and 13 respectively, as shown above.

- *wherein the specific knowledge product is a concrete, tangible, physical product capable of being sensed by at least two of the five basic human senses.*

**Claims 12 and 16:**

The combination of Pulford/Wilson discloses the limitations of Claims 1 and 13 respectively, as shown above.

- *wherein the specific knowledge product is a concrete, tangible, physical product capable of being sensed by at least three of the five basic human senses.*

With regard to the limitations *the specific knowledge product is a concrete, tangible, physical product capable of being sensed by at least two of the five basic human senses and the specific knowledge product is a concrete, tangible, physical product capable of being sensed by at least three of the five basic human senses*, the Examiner takes **Official Notice** that it is old and well known in the psychology of human behavior environment and to one of the ordinary skill in the art to use a motivational product (e.g. promotional product, inspirational product, motivational gift, motivational poster, motivational quotes) in order to motivate their employees to perform a better job or to feel like part of their business objectives. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the method of Pulford and Wilson with the old and well-known practice of the use of a motivational product because if an employee can see and touch (two of the five basic human senses) a motivational poster everyday or if a group of employees are invited to a recognition lunch (the employee will see, taste, listen, touch and smell during the lunch), then he/she will be motivated always to look for better ways to do a job/task, he/she will be more quality oriented and more productive, since he/she are part of their business objective.

18. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson in view of Gray.

**Claim 18:**

Wilson as shown discloses the following limitations:

- *determining a relevant improvement factor for employees of the company at a central location based on analysis of customer shopping data* (see at least page 730, 1<sup>st</sup> and 2<sup>nd</sup> ¶: "...to act as a diagnostic tool identifying failings and weak points in an organization's service delivery" which is one of the main purposes for mystery shopping is to identify areas or methods for improvement. These points are considered a good resource for customer shopping data, since mystery shopping "can track the key elements of an organization's service-delivery process and help identify where capital, technical, and human resources need to be allocated");

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- *developing a specific knowledge product* (see at least page 730, 1<sup>st</sup> ¶: "...to encourage, develop, and motivate service personnel by linking performance measurement tools directly with appraisal, training, and reward mechanisms", after identifying areas for improvement, as explained above, solutions and ideas are developed linking them with appraisal, training and reward mechanisms);

Wilson does not disclose the following limitation, however Gray as shown, does:

- *and a specific training program for improving employees of the company in the relevant improvement factor* (see at least column 2, lines 3-7 and 21-38: “A network is utilized to present a training simulation to a user for achieving a training goal. Information is integrated into the training simulated utilizing the network that helps motivate achievement of the goal by the user” which teaches that a training simulation is created in order to achieve a goal (e.g. relevant improvement factor) for improvement such as "... (3) sales and marketing excellence for teaching the user skills in increasing sales of products and services...”);
- *implementing the specific knowledge product and the specific training program with the employees of the company for improving the employees of the company in the relevant improvement factor, increasing customer satisfaction and sales* (see at least Figure 2, reference character: “The learning objectives and supporting methods that shape the training program an it's content 208” and column 12, lines 46-54 and column 14, lines 42-48, which “illustrates a model for the various aspects of training including: (1) a simulation 200 of the job and development of employee's ability to perform their job (technical, business, and customer skills; (2) a training environment 202 to deliver training anytime and anywhere; (3) coaching tips 204 and learning resources 206 to enhance performance development; and (4) A curriculum 208 of content addressing high volume, recurrent development needs” where “these learning objectives will help achieve business benefits such as increasing customer satisfaction through consistent customer interactions, reinforcing behaviors (selling, collections, etc) to meet business objectives, and reducing lost time/effort resulting from resolution errors.”);

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the technique of using deception to measure service performance through mystery shopping as taught by Wilson with the employee analysis based on results of an education business simulation of Gray because “business simulations may serve as the basis for delivering such performance and provide a learning environment that enables participants to acquire technical and social skills better (i.e., with higher retention) and faster (i.e., less time to competence) by providing a goal, simulating the workplace (with a focus on application of knowledge and skills), providing a risk-free environment, allowing the learner to make mistakes, allowing the learner to set own pace, providing support/resources/expertise as needed, and allowing performance to confirm employee's competence.” (Gray, see at least column 13, lines 12-21).

19. Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Wilson and Gray in view of **Official Notice**.

**Claim 19:**

The combination of Wilson/Gray discloses the limitations of claim 18, as shown above.

- *wherein the specific knowledge product is a concrete, tangible, physical product capable of being sensed by at least two of the five basic human senses.*

**Claim 20:**

The combination of Wilson/Gray discloses the limitations of claim 18, as shown above.

- *wherein the specific knowledge product is a concrete, tangible, physical product capable of being sensed by at least three of the five basic human senses.*

With regard to the limitations *the specific knowledge product is a concrete, tangible, physical product capable of being sensed by at least two of the five basic human senses and the specific knowledge product is a concrete, tangible, physical product capable of being sensed by at least three of the five basic human senses*, the Examiner takes **Official Notice** that it is old and well known in the psychology of human behavior environment and to one of the ordinary skill in the art to use a motivational product (e.g. promotional product, inspirational product, motivational gift, motivational poster, motivational quotes) in order to motivate their employees to perform a better job or to feel like part of their business objectives. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the method of Pulford and Wilson with the old and well-known practice of the use of a motivational product because if an employee can see and touch (two of the five basic human senses) a motivational poster everyday or if a group of employees are invited to a recognition lunch (the employee will see, taste, listen, touch and smell during the lunch), then he/she will be motivated always to look for better ways to do a job/task, he/she will be more quality oriented and more productive, since he/she are part of their business objective.

20. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pulford in view of Gray.

**Claim 21:**

Pulford as shown, discloses the following limitations:

- *a collection device having an input means* (see at least column 5, lines 17-18: “Hand held electronic data entry devices are well known”, which it is implicit disclosed that a hand held device is a wireless communication device since it is used to transmits data and communicates to a server. Handheld devices have been used to record information in the field, for example a mobile device, smart phone, wireless capable personal digital assistant (PDA), etc.);
- *wherein the collection device receives shopping data via the input means and provides the data to the server via the communication network* (see at least column 5, lines 17-18: “Hand held electronic data entry devices are well known”, which it is

implicit disclosed that a hand held device is a wireless communication device since it is used to transmits data and communicates to a server. Handheld devices have been used to record information in the field, for example a mobile device, smart phone, wireless capable personal digital assistant (PDA), etc.);

- *an analysis server, communicatively coupled with the collection device via a communication network and including a data analyzer configured to analyze customer shopping data and determine a relevant improvement factor;* (see at least column 5 and 6, lines 66-67 and 1-6, respectively: "The numerical ratings are then entered into the memory of a computer 160" where "the numerical ratings are totaled and calculated by the computer" and a relevant improvement factor is obtained by using the numerical ratings, since they are assigned to each response from the mystery shopping evaluation according to a predetermined score sheet);
- *and the data analyzer of the server analyzes the data and determines an improvement factor ;* (see at least column 5 and 6, lines 66-67 and 1-6, respectively: "The numerical ratings are then entered into the memory of a computer 160" where "the numerical ratings are totaled and calculated by the computer" and a relevant improvement factor is obtained by using the numerical ratings, since they are assigned to each response from the mystery shopping evaluation according to a predetermined score sheet);

Pulford does not disclose the following limitations, however Gray as shown, does:

- *a product developer configured to develop a knowledge product related to the relevant improvement factor* (see at least column 17, lines 45-51: "Deliver business results and measure gaps with desired impacts to update training content/delivery. Content developed with alignment to business objectives targeted. Content learning objectives identified by review of decision points with business process that impact business performance. All content within an individual module developed around defined learning objective" which teaches that the content learning objectives (e.g.

- knowledge product) are developed considering the areas of improvement aligned with the business objectives);
- *and a knowledge product related to the improvement factor is created by the product developer* (see at least column 17, lines 45-51: “Deliver business results and measure gaps with desired impacts to update training content/delivery. Content developed with alignment to business objectives targeted. Content learning objectives identified by review of decision points with business process that impact business performance. All content within an individual module developed around defined learning objective” which teaches that the content learning objectives (e.g. knowledge product) are developed considering the areas of improvement aligned with the business objectives);
  - *and a training developer configured to develop a training program related to the relevant improvement factor and the knowledge product* (see at least column 2, lines 3-7 and 21-38: “A network is utilized to present a training simulation to a user for achieving a training goal. Information is integrated into the training simulated utilizing the network that helps motivate achievement of the goal by the user” which teaches that a training simulation is created in order to achieve a goal (e.g. relevant improvement factor, knowledge product) for improvement such as "... (3) sales and marketing excellence for teaching the user skills in increasing sales of products and services...”);
  - *and a training program related to the improvement factor is created by the training developer* (see at least column 2, lines 3-7 and 21-38: “A network is utilized to present a training simulation to a user for achieving a training goal. Information is integrated into the training simulated utilizing the network that helps motivate achievement of the goal by the user” which teaches that a training simulation is created in order to achieve a goal (e.g. relevant improvement factor, knowledge

product) for improvement such as "... (3) sales and marketing excellence for teaching the user skills in increasing sales of products and services...");

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the method and system for evaluating quality services of Pulford with the employee analysis based on results of an education business simulation of Gray because "business simulations may serve as the basis for delivering such performance and provide a learning environment that enables participants to acquire technical and social skills better (i.e., with higher retention) and faster (i.e., less time to competence) by providing a goal, simulating the workplace (with a focus on application of knowledge and skills), providing a risk-free environment, allowing the learner to make mistakes, allowing the learner to set own pace, providing support/resources/expertise as needed, and allowing performance to confirm employee's competence." (Gray, see at least column 13, lines 12-21).

### Conclusion

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
- Croteau et al (US 2002/0182570 A1) discloses a computer-based quality enhancement training program.
  - Anderson et al (US 6,970,831 B1) discloses a method and means for evaluating customer service performance.
  - Ibarra (US 6,119,097) discloses a system and method for quantification o human performance factors.
  - Martijn Hesselink, Ton van der Wiele, **Mystery Shopping: In-depth measurement of customer satisfaction**; Erasmus Research Institute of Management (ERIM) ERS-2003-020-ORG (March 2003), 12 pages.
  - Adam Finn, Ujwal Kayandé, **Unmasking a Phantom: A Psychometric Assessment of Mystery Shopping**; *Journal of Retailing*, Volume 75(2) pp.195-217, 1999.

Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to **Nadja Chong** whose telephone number is **570.270.3939**. The Examiner can normally be reached on Monday-Friday, 9:30am-5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, **JAMES A. REAGAN** can be reached at **571.272.6710**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair> <<http://pair-direct.uspto.gov>>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866.217.9197** (toll-free).

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/Nadja Chong/Examiner, Art Unit 4143

12 February 2008

/James A. Reagan/Supervisory Patent Examiner, Art Unit 4143